

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FP HOLDINGS, L.P., D/B/A PALMS
CASINO RESORT**

Case No. 28-CA-224729

Respondent,

and

**LOCAL JOINT EXECUTIVE BOARD
OF LAS VEGAS, A/W UNITE HERE
INTERNATIONAL UNION,**

Charging Party.

**CHARGING PARTY'S REPLY TO RESPONDENT'S RESPONSE TO MOTION
FOR SUMMARY JUDGMENT AND RESPONSE TO NOTICE TO SHOW CAUSE**

Submitted by:

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Charging Party Local Joint Executive Board of Las Vegas hereby replies in opposition to Respondent FP Holdings, L.P. d/b/a Palms Casino Resort (“Palms”)’s Response to Motion For Summary Judgment and Notice to Show Cause.

Palms makes two arguments against summary judgment. First, Palms argues that the Regional Director erred in ordering an election in the underlying representation case based upon its theory that such an election was premature, and argues that the Board should reconsider its denial of the company’s request for review of that order. Second, Palms argues that the Board should wholly deny summary judgment on the allegation that Palms failed to provide information necessary and relevant to collective bargaining based upon its contention that the relevancy of one or two requests is not clear from the face of the request. Both of these arguments lack merit. Charging Party will address them in turn.

I. Palms cannot relitigate matters that were at issue in the Regional Director’s certification of the bargaining unit in 28-RC-217964, and its effort to do so must be rejected.

Palms’ response to the Notice to Show Cause largely attempts to relitigate the issues that the Regional Director and the Board previously ruled upon in 28-RC-208266. Palms admits as much when it states that its arguments “were already raised in the underlying representation proceeding,” but it argues nonetheless that “the Regional Director’s conclusion was without legal basis and the Board should take this opportunity to correct it prior to review by a federal appellate court.” Employer’s Motion to Motion for Summary Judgment, p. 2.

Section 102.67(g) of the Board’s Rules and Regulations bars Palms from seeking to relitigate the basis for certification in this proceeding. *See* 29 C.F.R. 102.67(g); *see also Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 159-163 (1941); *Delek Refining, Ltd.*,

363 NLRB No. 41 (Nov. 13, 2015); *Fedex Freight, Inc.*, 362 NLRB No. 140 (June 30, 2015); *The George Washington University*, 346 NLRB 155 (2005), *enfd. per curiam* 2006 WL 4539237 (D.C. Cir. 2006); *Ovid Convalescent Manor, Inc.*, 264 NLRB 11 A, 775 (1982), *enfd. mem.* 732 F.2d 155 (6th Cir. 1984); *Lighthouse for the Blind of Houston*, 248 NLRB 1366, 1367 (1980), *enfd.* 696 F.2d 399 (5th Cir. 1983); *Boatel, Inc.*, 204 NLRB 896, 897 (1973), *enfd. mem.* 490 F.2d 990 (5th Cir. 1974); *Keco Industries, Inc.*, 191 NLRB 257, 258 (1971), *enfd.* 458 F.2d 1356 (6th Cir. 1972); *General Dynamics Corp.*, 187 NLRB 679, 680 (1971), *enfd. per curiam* 447 F.2d 1370 (5th Cir. 1971); *Westinghouse Broadcasting Company, Inc.*, 218 NLRB 693 (1975).

The Board correctly denied Palms' request for review in the underlying representation case because it presented no grounds warranting such review. Palms' effort to relitigate its baseless theory is contrary to clearly established law. Summary judgment should be granted forthwith, and Palms should be ordered to comply with its duty under the National Labor Relations Act to negotiate in good faith with the Charging Party.

II. Palms' argument that summary judgment should be denied as to the entirety of the information request simply because it may be inappropriate with respect to one or two items is contrary to clearly established law.

Palms argues that summary judgment is inappropriate as to the allegation that it has failed and refused to furnish information necessary and relevant for purpose of collective bargaining. In a nutshell, Palms contends that because the relevance to bargaining unit members' terms and conditions of employment of *some* of the requested information is assertedly not clear on the face of the request, the General Counsel's motion should be denied as to *all* items requested.

At the outset, there is an ambiguity to the General Counsel's Motion for Summary

Judgment related to the information request that Charging Party will point out for sake of clarity. The information request at issue is set out at GCX 16, Exhibit A. It consists of a letter from the Charging Party to the Palms dated May 16, 2018 asking for information in three areas (subcontracts, housekeeping, and banquets). It further consists of an incorporated letter dated September 9, 2016 setting approximately 61 additional requests that Charging Party had previously made with respect to bargaining units at Boulder Station and Palace Station (two companies under common ownership with Palms where Charging Party represents bargaining units). The information request asked for documents responsive to these 61 requests to the extent that they had not previously been provided in those other negotiations. The complaint alleges that *all* this material is necessary and relevant for purposes of collective bargaining and that Palms has violated Section 8(a)(5) of the Act by not providing it. GCX, ¶5(f)-(h); ¶6.

However, in the Motion for Summary Judgment, the General Counsel describes the information request as consisting of the requests relating to subcontracts, housekeeping, and banquets set out in the May 16, 2018 letter, but not the 61 requests set out in the incorporated September 9, 2016 letter. *See* Motion for Summary Judgment, ¶11(a)(9). Charging Party understands that the General Counsel intends to move for summary judgment on all items set out in Exhibit A, and not just the items related to subcontracts, housekeeping, and banquets. Palms apparently presumes the same, inasmuch as it argues that certain “additional information” in Exhibit A is also not properly subject to summary judgment, such as employee social security numbers and copies of medical claims. *See* Employer’s Response to Motion for Summary Judgment, p. 4, n.1. Charging Party has advised counsel for the General Counsel of this circumstance in order that she may consider whether to amend the

Motion for Summary Judgment to clarify the scope of the information request that is subject to the Motion for Summary Judgment.

With respect to Palms' argument that the Board should deny summary judgment on all elements of the information request because some of it is assertedly not limited to bargaining unit employees (thus raising factual issues concerning its relevance), Palms misstates the law. Palms complains chiefly of Charging Party's request that it provide "a list of any subcontracted/contracted, subleased/leased outlets/vendors/services for Palms," arguing that this request might cover "any contractors used by the Palms, including those who have no relationship with or impact on any bargaining unit employee." *See* GCX 16, p. 1; Employer's Response to Motion for Summary Judgment, p. 4 (emphasis in original). Palms argues that this request might be construed to reach entities as far afield as construction contractors or vendors that provide slot machines. Palms also notes that it is not required to furnish employee social security numbers, and asserts that medical claims submitted to its health care plan administration "would reveal confidential and private medical information." *Id.* at n. 1.

Palms' argument that there may be a small number of requests for which summary judgment is not appropriate does not preclude summary judgment as to the rest. "It is well established that although a union's information request might not be specifically limited to bargaining unit employees and therefore could be construed as requesting information pertaining to nonunit as well as union employees, this does not justify an employer's blanket refusal to comply with the union's requests." *See DIRECTTV U.S. DIRECTV Holdings, LLC*, 361 NLRB no. 124, slip op. at * 2, N.L.R.B. 2014 WL 6853886 (Dec. 4, 2014); *see also Station GVR Acquisition, LLC D/B/A Green Valley Ranch Resort Spa Casino*

(*International Union of Operating Engineers Local 501, AFL-CIO*), 366 NLRB No. 175, slip op. at *4, N.L.R.B., 2018 WL 4092298 (Aug. 27, 2018). Moreover, to the extent that Palms had legitimate doubts regarding the scope of any request, it was required to communicate with Charging Party to seek clarification. *See Superior Protection Inc.*, 341 NLRB 267, 269 (2004) (“employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply to the extent it encompasses necessary and relevant information.”). Finally, Palms’ confidentiality arguments fail because “the confidentiality claim must be timely raised . . . and a blanket claim of confidentiality will not satisfy [its] burden of proof.” *Station GVR Acquisition, LLC, supra*, 366 NLRB No. 175 at * 3 (quoting *Mission Foods*, 345 NLRB 788, 791 (2005)). Thus, while summary judgment may not be appropriate with respect to a small number of items requested, it is entirely appropriate with respect to the substantial majority of them.

CONCLUSION

Based on the foregoing, the General Counsel’s Motion for Summary Judgment should be granted with respect to the test-of-certification allegations in the complaint. The motion should be granted at least in substantial part with respect to the information request allegation. Any information requests that are not properly subject to summary judgment should be remanded for further proceedings.

Dated: September 21, 2018

Respectfully submitted,

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PROOF OF SERVICE
STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the city and country of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 800, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing document entitled **CHARGING PARTY'S REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO NOTICE TO SHOW CAUSE** was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were therefore served upon the following parties via electronic mail on this 21st day of September, 2018 as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 21, 2018 at San Francisco, California.

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